**Local 888, American Federation of Government Employees (Bayley-Seton Hospital) *and* Hector Gunaratne, Elsie Pascoe, and Charles Irizarry.** Cases 29–CB–7435, 29–CB–7437, and 29–CB–7490

May 13, 1997

## SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On August 31, 1992, the National Labor Relations Board issued a Decision and Order in this proceeding,[1] adopting the judge's finding that the American Federation of Government Employees (AFGE) and its alter ego, Local 888,[2] violated Section 8(b)(1)(A) by refusing, in derogation of its duty of fair representation, to process pending grievances through arbitration following the Board's certification of another labor organization as the exclusive bargaining representative of the unit employees.

On October 13, 1992, the Respondent filed a petition for review with the United States Court of Appeals for the District of Columbia, and subsequently, on February 26, 1993, the Board moved the court to dismiss the Respondent's petition for review without prejudice to permit the Board to reconsider its ruling. On March 26, 1993, the court granted the Board's unopposed motion and remanded the case to the Board and, on April 16, the Board advised the parties that they might file statements of position with respect to the issues under reconsideration. The General Counsel and the Respondent filed statements of position.

The Board has reconsidered its decision and the record in light of the exceptions, briefs, and statements of position,[3] and has decided to reverse the judge's finding of a violation, and to dismiss the complaint for the reasons discussed below.

### I. THE BOARD'S INITIAL DECISION AND POSITIONS OF THE PARTIES

In our prior decision, we affirmed the judge's finding that the Respondent violated Section 8(b)(1)(A) of the Act by refusing to arbitrate pending grievances solely because of the subsequent certification of another union as bargaining representative.[4] In his decision, the judge noted that his findings were supported by court holdings in Section 301 proceedings and recent Board precedent. The General Counsel in his statement of position asserts that the judge's finding of an 8(b)(1)(A) violation is amply supported by Board and court precedent and that, therefore, the Board properly adopted the judge's finding and should adhere to that decision. The Respondent's statement of position incorporates by reference the arguments originally made in its brief on exceptions. While it suggests that the grievances in question might have been instigated by a Local 888 officer in order to "create a campaign issue" over grievances which he knew that the AFGE trustee could not easily resolve prior to the decertification election, its main arguments are (1) that the AFGE officer assigned to supervise Local 888 after it was placed under trusteeship acted reasonably and in good faith pursuant to legal advice based on reported precedent that a union has no duty to arbitrate previously filed employee grievances after the union has been decertified as the representative of those employees, and (2) that even if Local 888 violated the duty of fair representation incorporated in Section 8(b)(1)(A) by disclaiming any further obligation respecting the grievances after the decertification election, AFGE cannot be held liable for that conduct because it was not a party to the grievance proceedings nor separately named in the underlying unfair labor practice complaint.

We find merit in the Respondent's contention that its decision not to proceed to arbitration on the grievances at issue was pursuant to a good-faith effort to ascertain the extent of its legal obligations and act accordingly.[5] This decision was based on a reasonable interpretation of existing case law, given the scope of the then-current precedent.[6] Accordingly, we shall vacate our earlier decision, and dismiss the instant complaint for the reasons set forth below.

[1] *Government Employees Local 888 (Bayley-Seton Hospital)*, 308 NLRB 646 (1992).

[2] AFGE is the International body of which Local 888 was an affiliate placed under trusteeship. Together they compose the Respondent.

[3] The Respondent has moved to reopen the hearing to adduce evidence and arguments in AFGE's defense, including a challenge to the merits of the three grievances, or alternatively, to present oral argument before the Board. We have considered the affidavits submitted and deny the motion to reopen because they present no previously unavailable evidence. We deny the request for oral argument because the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[4] Accordingly, the judge found it unnecessary to pass on a fully litigated alternative complaint allegation relating to the Respondent's failure to process the grievances further prior to the Board-conducted election. No exception was filed to the judge's refusal to pass on that alternative theory and it was not considered by the Board. In light of our decision to reverse the judge's theory of the violation, however, the fully litigated alternative may be considered preserved for Board consideration. See *Pay Less Drug Stores Northwest*, 312 NLRB 972, 973 (1993). Our findings relating to the Respondent's preelection conduct are set forth below.

[5] The rationale set forth below encompasses the totality of the Respondent's conduct regarding the instant grievances, including the time period prior to the Respondent's loss of representative status. See fn. 4, above.

[6] See *Electrical Workers IUE Local 444 (Paramax Systems) v. NLRB*, 41 F.3d 1532, 1534 (D.C. Cir. 1994).

## II. FACTS FOUND BY THE JUDGE

The facts, as found by the judge, show that in early 1989[7] the Employer announced a plan, effective February 12, for reducing the hours of some employees, including Elsie Pascoe, and to eliminate the positions of employees then on extended sick leave, including Hector Gunaratne and Charles Irizarry. After receiving complaints from the affected employees, Local 888's president, Kenneth O'Neil, filed formal grievances under the contractual grievance procedure: on February 9, over the elimination of Gunaratne's and Irizarry's positions, and on March 2, over the reduction in Pascoe's hours. O'Neil processed these grievances fully through the contractual steps up to the point of arbitration without achieving final resolution of the claims of Pascoe or Gunaratne and Irizarry.[8] Accordingly, on March 17, O'Neil filed a written demand for arbitration with the American Arbitration Association (AAA), requesting an arbitration hearing for the grievance concerning Gunaratne and Irizarry, and on May 22 he demanded arbitration with respect to the Pascoe grievance.[9] On or about May 9, AAA set a hearing date of June 6 for the Gunaratne and Irizarry arbitration. No date was ever formally set for the Pascoe arbitration.

On or about May 22, Derrick Thomas, a National AFGE representative who had been assisting Local 888 officers for about a year, issued a report to the National AFGE president. Thomas reported that he believed that Local 888's officers were planning to secede from the federation. Thomas was then appointed trustee to displace Local 888's officers, and to take over the operation of the Local. On May 24, Thomas arrived at the Local 888 office, which was located on the Employer's premises, to remove the officers. On his arrival, he discovered that Local 888's equipment, files, and moneys had disappeared. Thomas then met with O'Neil and informed him that a trusteeship had been imposed on Local 888 and also asked O'Neil for the whereabouts of the Local's files and moneys. O'Neil replied that he had no knowledge of the missing property. O'Neil asked Thomas what would be done about the pending grievances, and Thomas responded that he would handle it. Thereafter, on June 2, O'Neil filed a representation petition on behalf of the newly formed North Shore Health Care Employees Union (North Shore), and an election was scheduled for September 7.

Thomas testified that he did not initiate contact with any grievants because he was unaware of their identities, but that he wrote to AAA to request a postponement of the June 6 arbitration hearing because he was unable to evaluate the grievances or prepare for a hearing without the benefit of the grievance files or money.[10] Subsequently, in July or August, when each of the grievants approached Thomas and questioned him as to the status of their grievances, Thomas explained that he was unable to process the grievances until he had found the missing files and the Local's finances improved, but that he intended to pursue their grievances and see to it that they got a fair deal. Thomas eventually made an appointment with Director of Human Services Flora Doty to discuss the Gunaratne grievance, after receiving a manila folder from Gunaratne containing information pertaining to his grievance. Thomas testified that Doty explained that the Employer's elimination of Gunaratne's position did not violate the contract, and that he came away from that meeting with some doubts as to the merits of Gunaratne's grievance. Thomas acknowledges, however, that he told Doty that the matter was not settled, and also that he did not tell Gunaratne that he had any doubts about the merits of his grievance.

Thomas testified that after receiving repeated requests from Pascoe to pursue her grievance, he met with Doty and afterwards told Pascoe that Doty had explained to him that the Employer's reduction of Pascoe's hours was legal and that Doty had said that she had already told Pascoe so. Thomas, however, assured Pascoe that he would continue to pursue her grievance. Thomas had a similar conversation with Irizarry, whose grievance—which was similar to Gunaratne's—he apparently did not separately discuss with management.

Just prior to the September 7 election, the grievants again complained to Thomas about the Respondent's inaction on their grievances and how it would affect their vote in the election. Thomas assured them that the Union intended to continue representing their interests irrespective of how they voted in the election. O'Neil testified that after the ballot tally showed that North Shore had won the election, he again asked Thomas about the pending grievances, and Thomas responded, "You won, isn't that enough?" North Shore was certified as the bargaining representative on September 25, and Local 888 was subsequently disbanded.

Thereafter, at North Shore's initial bargaining meeting with the Employer on October 13, North Shore offered to settle or resolve the pending grievances with the Employer. The Employer's attorney, however, refused to deal with North Shore with respect to the

[7] Unless otherwise indicated all dates hereafter refer to 1989.

[8] Although one piece of correspondence refers to the Pascoe grievance as being untimely filed, it is clear from the documentary evidence that her grievance was processed through all of the initial grievance steps.

[9] These demands for arbitration did not include the names of the individual grievants.

[10] Although O'Neil claimed copies of all grievances are sent to National AFGE's district offices, Thomas testified that he could not find copies of them at those offices.

grievances, further stating that, while management was willing to agree to most of the former contract's terms, it would not agree to the retention of any provision for arbitration of grievances.[11] In November, Gunaratne and Pascoe filed unfair labor practice charges against the Respondent for failing fairly to represent them. In January 1990, Irizarry filed similar charges.

In December, Thomas received a letter from AAA inquiring into the status of the pending arbitrations, as a consequence of which he called National AFGE Vice President Rita Mason for advice. Mason informed Thomas that National AFGE's general counsel had advised that the Respondent had no legal obligation to pursue the grievances because it was no longer the bargaining representative. Mason further instructed Thomas to notify the AAA that future dealings regarding these grievances should be taken up with North Shore as the newly certified representative. Thomas wrote to AAA and sent a copy of that letter to North Shore. Thomas also wrote a letter of position to the Board's Regional Office, in response to Gunaratne's charge, asserting that as a result of the election, the Respondent "lost its standing as the exclusive representative for bargaining unit employees at Bayley-Seton Hospital." Thomas acknowledges that he did not notify any of the three grievants of this position.

## III. THE RESPONDENT'S DUTY OF FAIR REPRESENTATION

### A. *The Respondent's Preelection Grievance Handling*

The courts have created and imposed on unions a duty of fair representation (referred to as DFR), to compensate for limitations that are placed on the employees' individual rights when they select a bargaining representative with exclusive authority over negotiation and protection of their contract rights. That duty has been defined as a duty "to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct."[12] A union's failure to meet its duty results in a violation of Section 8(b)(1)(A) of the Act, which prohibits unions from restraining or coercing employees in the exercise of their Section 7 rights.[13]

In cases involving grievance handling, the Board has found a breach of the DFR when a union affirmatively acts with a hostile motivation and so refuses to represent bargaining unit employees because they are nonmembers, dissident members whom it considers troublemakers, or individuals against whom a union official harbors animosity.[14] Apart from these types of discriminatory behavior, the Board's approach has been to afford unions substantial latitude in their representational decisions, and to require something more than mere negligence, poor judgment, or ineptitude in grievance handling.[15] For example, a breach of the duty was not found in the case of a union's negligent failure to disclose to a grievant its decision not to file a grievance until the time for filing had passed.[16] A violation was found, however, when a union failed to file a grievance after agreeing to do so and without proffering any explanation for its nonaction,[17] because this amounted to "purposely keep[ing the employee] uninformed or misinformed." Id. at 980. Whether a breach occurs when a union abandons a partially processed grievance short of arbitration turns on whether the union's disposition of the grievance was purely perfunctory or motivated by ill will or other invidious considerations. *Bottle Blowers Local 106 (Owens-Illinois)*, 240 NLRB 324 (1979).

Here, the General Counsel alleges that Thomas' preelection conduct, i.e., his requested indefinite postponement of the already scheduled arbitration and his subsequent failure to process it or the remaining grievance through arbitration without proffering any explanation, constitutes perfunctory or arbitrary handling of the grievances. Applying Board precedent in this case, we find that Thomas' conduct while the Respondent remained the employees' representative did not rise to the level of a breach of the duty of fair representation in the context of the unusual circumstances that confronted him on his appointment as trustee of Local 888.

On his assumption of the role of trustee, Thomas immediately learned that the Local's records, moneys, and equipment had all disappeared, giving him no physical record of the existence or status of particular grievances, and no resources with which to process them. Thomas' request for a postponement of the June 6 arbitration hearing was in this context clearly reasonable. Shortly thereafter, Thomas was faced with the fil-

[11] O'Neil testified that "charges" were filed after this bargaining meeting between North Shore and the Employer. His testimony does not identify the source, parties, matters, or substance of the "charges," or the forum in which they were filed. We further note that the judge's reference to "the previous representative" having filed charges in the instant proceeding is erroneous in light of the General Counsel's advising the Board that there is no record of any charges being filed against the Employer in connection with any of the events or matters involved, or referred to, in this proceeding. Our analysis below is not affected by the judge's erroneous conclusion.

[12] *Vaca v. Sipes*, 386 U.S. 171, 177, 190 (1967).

[13] *Teamsters Local 997 (Keebler Co.)*, 298 NLRB 604 (1990).

[14] See generally *Teamsters Local 814 (Beth Israel Medical)*, 281 NLRB 1130, 1146–1149 (1986), for a Board survey of DFR violations.

[15] *Service Employees Local 579 (Beverly Manor)*, 229 NLRB 692, 695 (1977).

[16] *Teamsters Local 692 (Great Western Unifreight System)*, 209 NLRB 446, 447 (1974).

[17] *Union of Security Personnel of Hospitals*, 267 NLRB 974, 979 (1983) (union official told grievant that he "will get this thing into arbitration and see how far we can go with it.").

ing of a competing claim for representation of the bargaining unit employees by the former Local 888 officials. We find that this combination of circumstances distracted Thomas and sufficiently accounts for some delay in his investigation of any grievance matters that were initiated prior to his becoming trustee.

Subsequently, when Gunaratne and Pascoe made inquiries of Thomas in July and August about the status of their grievances, Thomas responded in a reasonable manner under the circumstances, by candidly explaining that he had neither records of their grievances nor moneys to process them, and expressing a willingness to investigate their grievances. Thomas thereafter met with Personnel Manager Doty on at least two occasions to ascertain management's position regarding the reduction in Pascoe's hours and the elimination of Gunaratne's job.[18] Thomas also continued to give repeated assurances to the employee-grievants, up to and including the day of the Board election,[19] of his continuing interest in pursuing their grievances, irrespective of how they might vote in the election.[20] There is no contention that this delay in processing the grievances itself adversely affected the ability of the Respondent to process them.

There is general testimony by Thomas about his prior role as AFGE's representative to Local 888, in which he participated in some meetings with management about employee working conditions as well as discussions with O'Neil concerning decisions to file employee grievances. However, there is no record evidence indicating that Thomas had any knowledge, at the time he replaced O'Neil, of either the precise subject matter of the grievances or the identity of the employees who had filed them.

In these circumstances, we find no basis for predicating a finding that the Respondent breached its duty of fair representation by Thomas' preelection handling of the grievances. In sum, we find no evidence indicating that his conduct was either arbitrary or perfunctory, and none that it was discriminatory or in bad faith, i.e., intended as a means of undermining the effectiveness of the competing labor organization.

[18] The substance of the Gunaratne and Irizzary grievances are identical.

[19] There is no evidence pertaining to any handling of these grievances subsequent to the representation election on September 7.

[20] Although the Respondent's decision not to arbitrate these grievances was ultimately determined by the employees' exercise of their Sec. 7 right to select a different bargaining representative, we find no basis for concluding that that decision was retaliatory or discriminatory. In this connection we do not infer any unlawful motivation from Thomas' utterance—"You've won, isn't that enough?"—in response to O'Neil's inquiry about the status of the subject grievances immediately after the result of the tally of ballots became known. Rather, we view Thomas' response as one of annoyance with O'Neil's verbal jab instead of a statement of Thomas' future intentions concerning the grievances.

### B. *The Respondent's Conduct After its Replacement as Representative by North Shore*

The judge found that, following its loss of representative status, the Respondent breached its duty of fair representation, in violation of Section 8(b)(1)(A). He thus rejected the Respondent's contention that its good-faith reliance on judicial precedent led it reasonably to believe that it no longer had a duty to complete the processing of the grievances through arbitration because of the intervening certification of North Shore. The judge's finding is partially based on his reading of decisions in Section 301 suits in the Federal courts as consistently requiring employers to arbitrate grievances even when the union has been decertified,[21] or otherwise lost its majority status,[22] and other court holdings indicating that not all substantive contract rights are extinguished by such changes in relationships as expiration of the contract[23] or even decertification of the bargaining representative.[24]

The judge also relied heavily on two Board decisions, *Missouri Portland Cement Co.*,[25] and *Arizona Portland Cement Co.*,[26] In *Missouri Portland*, the Board considered an employer's refusal to continue to process a grievance with a union after it had lawfully closed its facility, terminated all the unit employees, and reopened with a new work force. The employer argued that it was no longer obligated to deal with the union concerning grievances because the bargaining unit no longer existed and the union was no longer the employees' exclusive representative. The Board rejected that argument and held that the union, despite its subsequent loss of representative status, continued to represent the former employees with respect to those grievances that were pending at the time of the dissolution of the unit, and that the employer had a duty to complete unfinished business by meeting with the former union for that limited purpose.

In *Arizona Portland*, the Board addressed the question of an employer's obligation to arbitrate grievances with a newly certified union rather than the contracting union with whom the employer had consented to arbitrate grievances arising under that contract. Acknowledging the consensual nature of arbitration,[27] the

[21] *U.A.W. v. Telex Computer Products*, 816 F.2d 519 (10th Cir. 1987); *United States Gypsum Co. v. Steelworkers*, 384 F.2d 38 (3d Cir. 1967), cert. denied 389 U.S. 1042 (1968); *Local 386 Engineers v. Western Electric*, 359 F.Supp. 651, 654 (D.N.J. 1973).

[22] *John Wiley & Sons v. Livingston*, 376 U.S. 543 fn. 5 (1964), holding that "the fact that the Union does not represent a majority of an appropriate unit does not prevent it from representing those employees who are covered by the agreement which is in dispute and out of which Wiley's duty to arbitrate arose."

[23] *Nolde Bros., Inc. v. Bakery Workers*, 430 U.S. 243, 251 (1977).

[24] *Telex*, supra at 523, citing *Gypsum*, supra at 45, 46.

[25] 291 NLRB 1043 (1988).

[26] 302 NLRB 36 (1991).

[27] Id., citing *Indiana & Michigan Electric Co.*, 284 NLRB 53, 55–56 (1987).

Board held that, because the employer's consent to arbitrate grievances appeared only in the contract between the employer and the union that had been repudiated by the employees, the employer had no obligation to deal with the newly certified union concerning the arbitration of those grievances. The Board noted that had the employees merely repudiated their former union without also selecting a new representative,[28] and had a charge been filed alleging the employer's refusal to deal with the former representative, the refusal-to-arbitrate issue could be resolved under *Missouri Portland*, with the employer being found in violation of an obligation to meet with its employees' former representative to "complete unfinished business," including the arbitration of grievances that had arisen before the repudiation.[29]

The judge relied on the Board's "significant" observation in *Arizona Portland* that (unlike in *Missouri Portland* and this case)[30] the charges were not filed by the previous representative. He concluded that if that had been the case, the Board in *Arizona Portland* would have followed *Missouri Portland*, *Wiley*, supra, and *Telex*, supra, and ordered the employer to arbitrate the grievances with the prior representative who was signatory to the contract and with whom the employer had agreed to arbitrate. The judge found, as a corollary to the reasoning of *Missouri Portland*, that if the employer had the obligation to arbitrate in order to "complete unfinished business," that the previous representative, who had the authority to compel such arbitration likewise had a duty of fair representation to proceed with the arbitration. He accordingly concluded, on the basis of this Board and court precedent, that the certification of another union to represent the employees in the bargaining unit is no defense.[31]

The foregoing cases reflect the view of the Board and the courts that such events as the expiration of a collective-bargaining agreement or the removal of a collective-bargaining representative should not result in the employees' automatic loss of rights—including rights to arbitration of grievances as provided for in a contractual arbitration clause—that had arisen under the agreement in question. Although inferences could be drawn from those decisions respecting the postremoval grievance-handling and arbitration obligations of a union that has been removed as collective-bargaining representative, none of the decisions spoke directly to the question of a replaced union's duty of fair representation in such circumstances. We find that—given the state of the law at the time the Respondent's alleged unlawful failure to pursue arbitration occurred—the Respondent did not breach that duty on the facts alleged here, and accordingly did not violate Section 8(b)(1)(A) of the Act.

At the time, in 1989, when the Respondent took the position that it had no obligation to be involved in the further handling of the three pending grievances, the Board had not yet decided *Arizona Portland*, which represented its first square holding that an employer is not obligated to arbitrate contractual grievances with a union that has become the employees' representative but that was not party to the contract under which the grievances arose and is not essentially a continuation of the former union under a different name. Hence, the Respondent was not on notice of any legal precedents making it clear that North Shore would be unable to compel arbitration of the grievances and that therefore a result of the Respondent's postelection stance was that the grievances would simply die. Furthermore, at the time the Respondent took its position, it was acting in reliance on a court decision which indicated that a union displaced as bargaining representative through an election had no grievance processing obligation after the election.[32]

Accordingly, we find, contrary to the judge, that at the time of the Respondent's refusal to pursue arbitration of the three grievances, the state of the law concerning a union's duty to continue representing unit employees after its displacement by a newly certified representative was unclear and that the Respondent's conduct was therefore not so unreasonable as to violate its duty of fair representation. The Respondent could reasonably have believed that its "actions were fully consistent with established law" defining the duty of fair representation,[33] and we therefore find that the Respondent's decision to abandon arbitration of the grievances was not arbitrary, discriminatory, or taken in bad

[28] The Board stated, in dictum:

> In any event, it would hardly be conducive to industrial peace to have two unions simultaneously representing the employees, albeit with respect to different time periods.

[29] *Arizona Portland*, supra, 302 NLRB at 36–37.

[30] As previously noted in fn. 11, supra, the judge erroneously found that "the previous representative" filed charges against the Employer in this case.

[31] Citing *U.S. Gypsum*, supra.

[32] *Teamsters v. Flight Attendants*, 864 F.2d 173 (D.C. Cir. 1988), affg. in part 663 F.Supp. 847 (D.D.C. 1987). The issue of the displaced union's obligation arose only indirectly in what was styled as an unjust enrichment suit by the successor union (Teamsters), which contended that the predecessor union had been unjustly enriched byvirtue of the sums the Teamsters expended in the course of processing previously pending grievances. The district court rejected the unjust enrichment claim and granted rule 11 damages against the Teamsters for filing a suit without a reasonable basis in fact or law; anappeal was taken only with respect to the Rule 11 damages and an attorney fee award. In affirming the district court on those issues, however, the court of appeals noted that the district court had, in part, reasoned that "AFA lost the election and no longer has the duty to process the grievances at issue. As the new exclusive representative, [Teamsters] has the legal duty to process the grievances. The services thereby provided by [Teamsters] inure to the benefit of the flight attendants, not the AFA." 864 F.2d at 176, quoting unpublished district court memorandum decision.

[33] *Electrical Workers IUE Local 444 (Paramax Systems) v. NLRB*, 41 F.3d 1532, 1534 (D.C. Cir. 1994).

faith, and hence was not a breach of the duty of fair representation embodied in Section 8(b)(1)(A) of the Act.[34] Accordingly, we shall dismiss the instant complaint.[35]

[34] Member Higgins concurs with his colleagues, and he believes that this result is consistent with the "retroactivity" principles of *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971). In this regard, he notes that the Respondent acted on the basis of precedent which suggested that it did not have a duty to press the grievances to arbitration. See *Teamsters v. Flight Attendants*, supra. In addition, the Respondent could reasonably have believed that the new union could press the grievances to arbitration. (*Arizona-Portland* had not yet been decided.) Finally, at the time of the Respondent's conduct, there was no case holding that an ousted union had an obligation to process grievances that arose during its tenure as representative. *Missouri Portland Cement Co.*, supra, decided prior to the events here, held only that the employer has a duty to meet, on request, with the ousted union to resolve such grievances. The case did not hold that the union had a duty to make such a request. In these circumstances, assuming arguendo that the current law is that the ousted union has such an obligation, it would not be appropriate to apply the principle retroactively to the facts of this case.

[35] For institutional reasons, Chairman Gould joins in the decision to dismiss the complaint in this case. In doing so, he expresses no view regarding whether the duty of fair representation is implicated by a union's intentional failure to pursue the arbitration of grievances which arose during its tenure as representative after its decertification.

## ORDER

The Board having duly considered the matter,

IT IS ORDERED that the Board's previous Order reported at 308 NLRB 646 (1992), is vacated and the complaint is dismissed.